THE HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No.20116 of 1994

Dated: 27th September, 2006

Between :-

G.Uday Kumar .. Petitioner

And

Municipal Corporation of Warangal
Rep. by its Commissioner, S.V.N.Road,
Warangal and 2 others .. Respondents

THE HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No.20116 of 1994

ORDER:-

1. Heard Sri Ramulu, the Counsel representing the writ petitioner, Sri Durga Nageswar Rao, the learned standing Counsel representing Warangal Municipal Corporation – R.1 and Sri Narender, the learned standing Counsel representing KUDA – R.2.

2. The Writ Petition is filed for a Writ of Mandamus declaring the contemplated action of the demolition of building bearing No.1/483 equivalent to new No.1-6-96 situated at Station Road, Kazipet, Warangal by the respondents, their officials, employees and agents as illegal, arbitrary and violative of Article 300-A of the Constitution of India and consequently prohibit the respondents, their officials, employees and agents from in any causing loss to the said building by demolition or otherwise and pass such other suitable orders.

3. It is stated that the grandfather of the petitioner late G.Pullaiah constructed a house bearing municipal No.1/483 equivalent to new number 1-6-96 at Main Road, Kazipet, Warangal prior to the year 1954 and in the year 1971 his grandfather executed a deed of relinquishment in favour of his father late Dr.G.Gourishanker. It is stated that the father of the petitioner died in the year 1991 and after the death of his father, by succession he became the owner of the said building and to this effect his name was also entered in the property assessment register of the 1st respondent as per its letter Roc.No.Ex.A.12/8892/94, dt.11-10-1994. It is further stated that in the year 1974 the father of the petitioner submitted an application in the office of Warangal Municipality for reroofing of the said building and accordingly the then Warangal Municipality accorded

permission for reroofing of the said building. It is also stated that after obtaining the said permission, the father of the petitioner developed the building and laid the new roof as per the permission granted by the then Warangal Municipality and after the death of his father he became the owner of the said building. The petitioner states that he had given the above said building on lease to Dr.A.Devender Reddy for carrying the business of selling optical and for the purpose of clinic. The petitioner also states that he came to know through the said tenant that without giving any kind of notices, the officials of the respondents intending to demolish his building and acquire the said house for the purpose of road widening. It is also stated that no notice was given either to the petitioner or to his tenant by the respondents before contemplated demolition of his building. It is also further stated that the respondents, till today, have not initiated any proceedings for acquisition of his building under any law and the said action of the respondents is contrary to Article 300-A of the Constitution of India and the same has to be declared as illegal, arbitrary and void. It is also stated that as per Section 18 of the A.P.Urban Areas (Development) Act 1975, if in the opinion of Government any land is required for the purpose of development or for any other purpose under the said Act, the Government may acquire such land under the provisions of Land Acquisition Act 1894. It is further stated that the possession of the land has to be taken under the L.A.Act and the same has to be transferred to the authority or local authority for the purpose of for which the land has been acquired on payment of compensation. The petitioner

further states that the Government has neither initiated any proceedings under Section 18 of the Urban Areas (Development) Act 1974 nor initiated any proceedings for acquisition of his building under the L.A.Act and therefore the respondents cannot demolish his building and take the possession of his building. It is further stated that the tenant of the petitioner informed him that some persons claimed to be the officers of Municipal Corporation of Warangal came to his house and illegally demolished the bath room and toilets and immediately thereafter the petitioner rushed to Warangal and gave a representation dt.7-11-1994 to the 1st respondent and requested the 1st respondent not to demolish his building. It is also further stated that the officers of 1st respondent who are illegally demolished the bath-room and toilet proclaimed that entire building would be demolished within two weeks and therefore the petitioner apprehends that at any moment the respondents may demolish his building, in which event he shall be put to heavy loss. It is further stated that the Warangal Municipality which was originally a selection grade has now been converted into Corporation and that the Special Officer of the 1st respondent is also the Chairman of the 2nd respondent i.e., Kakatiya Urban Development Authority. It is also stated that the Special Officer of the 1st respondent also in the capacity of Chairman of the 2nd respondent started demolition of the houses existing beside the road on the Warangal Municipal area without giving any notice and without initiating any proceedings under law and with the help of the employees and contractors and with the

Police-aid and that the said action is arbitrary, illegal and liable to be set aside. In such circumstances, the writ petitioner approached this Court praying for appropriate reliefs.

4. Counter affidavit was filed by respondents 1 and 2. Specific stand was taken in para 3 of the counter affidavit that the petitioner had encroached upon the Hanamkonda -Hyderabad 100 ft. wide road and constructed a building in violation of the rules and law of the land in force and without taking permission for construction of the building from municipal authorities. It is also stated that there is a municipal drain existing behind the unauthorised structure of the petitioner which demarcates the road boundary and the width of the road in 100 ft. from the said drain, existing behind the unauthorised structure of the petitioner, to the other end of the road width. It is also further stated that the contention of the petitioner regarding a person's constitutional right to hold and enjoy the property is undeniable but at the same time the same contention goes against him and negatives his act as the petitioner himself has encroached upon other's property i.e., the main road, which is the property of the Government for the benefit and convenience of the public at large. It is also stated that the unauthorised structure of the petitioner has come up by means of wilful encroachment of the road boundary with deliberate selfish motive and the petitioner's unauthorised structure on the road is causing obstruction to free and smooth flow of traffic resulting in the area becoming accident prone, which is hazardous to the public at large. It is also further stated that the petitioner has no right or title whatsoever over the land on which the unauthorised

building is constructed within the road alignment. It is also further stated that a plan showing the details of encroachment made by the petitioner and a few others, road alignment and railway yard is filed herewith and the said plan clearly shows that the petitioner and few other persons have encroached upon the road boundary. It is stated that the petitioner has encroached upon the road and constructed the building illegally in violation of the law in force and without any right or title over the land upon which the building was constructed, the respondent No.1 is entitled under the law to take action for removal of such encroachment and the constitutional right to hold and enjoy the property as contended by the petitioner is subject to other laws and legal title over the land or property and it does not confer any right upon a person to occupy others property, including encroaching upon the road boundary land, as has been done by the petitioner. It is further stated that the question of acquisition of property by the Government for a public purpose arises when the Government acquires private property and in this case, the property in question belongs to the Government and as such the contention of the petitioner for acquisition of the same property is meaningless and untenable. It is denied that the petitioner and his ancestors are the owners of the land covered by the structure in question. It is further stated that the nature of usage of the structure, as contended by the petitioner, is not relevant for the purpose of the Writ Petition. It is also stated that no building permission can be granted for construction of a building on the land covered by a road and even if any granted by mistake, the same cannot confer any right on the

petitioner as building permission is subject to title over the land. It is also further stated that the facilities or amenities available in the building are also not relevant for the purpose of Writ Petition particularly when the land covered by the building of the petitioner belongs to the Government i.e., a road. It is stated that the mutation proceedings, as stated by the petitioner if any exist, cannot confer any additional title upon the petitioner. It is further stated that the petitioner and his ancestors are not the rightful owners of the land occupied by the structure in question and similarly the payment of property tax as submitted by the petitioner does not confer any right to claim a title over the land covered by the land. It is pointed that the petitioner does not have any right to raise structures over the road portions affecting the master plan road as well as the road which was existing even prior to the sanction of the master plan in the year 1971 and cannot squat over the road. It is stated that the respondents, as public servants, have every right to remove the said encroachment by following the procedure as prescribed in the statute and therefore the claim of the petitioner that his properties are being demolished without following the procedure established by law and apprehensions all are untrue and incorrect and these respondents are following the procedure established by law and exercising authority conferred by the statute. It is also stated that the petitioner being encroached does not deserve any indulgence by this Hon'ble Court. It is also further stated that there is a municipal drain behind the petitioner's building in question and the building in question is raised on the land covered by the road and it

is also admitted by the petitioner that there is a vacant site belonging to the Government behind his building which in fact is covered by the municipal drains. It is stated that the actual road width extends up to the said drain located behind the building in questioned and that being the case, not only that the petitioner's contention falsifies that the road width is 40 feet but also establishes that the building in question was raised on the land covered by the road unauthorisedly. It is further stated that behond the municipal drain, behind the building in question there is no other Government land and in fact the compound wall of Railway School abuts the said drain. It is further stated that for removal of encroachments from within the road boundaries the existance or otherwise of the complaints are immaterial and unnecessary. It is also further stated that the road width of 100 ft. is maintained all along except for the petitioner's structure in question and a few other structures adjoining it and more over the said road is existing as a 100 ft. wide road much prior to the sanction of the master plan in 1971 and has been proposed as 100 ft. road and it being a Highway from Warangal to Hyderabad it has noe xisting encroachments on the alignments except the portions indicated in orange colour in the sketch plan filed with this counter affidavit and the portions indicated in orange colour are encroached upon by persons illegally which includes the petitioner's also. It is also further stated that it is the duty of the local authority, whether it is Municipality or Municipal Corporation to remove all the encroachments on the roads for which local authority is competent. It is stated that the petitioner himself has

stated that the respondent started demolition of the houses existing on the road in Warangal Municipal area, which is an admission of the fact by him that the structure in question is also existing on the road. It is also further stated that while alleging that taking advantage of the fact that the husband of the Special Officer of the 1st respondent is working as District Collector at Warangal she is resorting to illegal activities of demolition under threat and coercion, it is stated that the petitioner has exceeded his limited and the said allegation has no place in a case like this in the context of the above facts and while denying the allegation which is totally incorrect and that the allegation is unwarranted and is made with malafide intention. It is also further stated that the demolition action in respect of the buildings quoted are in accordance with law and the same have not been challenged. It is also further stated that first respondent neither created terror in the minds of Warangal people nor have ever declared that she shall not care for the injunction orders of the Court and the said allegations are blatant lies and false. It is further stated that the contention that the building of leading merchant by name Jeevanlal Agarwal was demolished under the name of development without giving time to remove the articles, stock in trade etc., are also false and incorrect and hence denied and in fact the land covered by the demolished structures in the said complex was surrendered to the Municipality and Kakatiya Urban Development Authority vide an undertaking dt.21-8-86 of Sri Jeevanlal and accordingly it was demolished and under the said undertaking the road affected portion was surrendered and thereafter the building permission

was granted to him. It is also further stated that insofar as Jagannath Temple is concerned, the property was acquired, compensation paid and demolition carried out and the petitioner being encroacher is not entitled for any compensation. It is denied that these respondents have created terror in the minds of the people and also that there is any breach of injunction order committed by these respondents and the said allegations do not bear the truth and have been brought up for the purpose of this case. It is also further stated that the statutory bodies are acting in implementation of the development of the town and in public interest, if any parties are affected they are always entitled to be compensated as per law, but the said acts are not being carried out without following the procedure by law as is being made out by the petitioner. It is stated that the employees of the respondents are taking action for removal of encroachments on and obstructions to the road by taking police assistance for the security of the staff engaged in demolitions and to maintain law and order on the spot. It is further stated that the allegation of preventing any person from taking photographs is totally incorrect and false and there is no necessity for the respondents to prevent the petitioner or for the matter any other person from taking photographs and in fact photographs have not only been taken but also appeared in the press. It is also stated that the other allegations made by the petitioner are also incorrect and is creation of the petitioner's mind that day in and day out the people of Warangal specially those who are having buildings on the main road are not having sleep and peaceful mind. It is also further

stated that in fact the general impression of the people at large is positive and the mind of the people of Warangal can be assessed from several reports appearing in the press applauding the work of removal of road encroachments including demolition of the unauthorised structures. It is also stated that apart from the reports appearing in the press, even pamphlets have also come out in praise of the said work and a few of such press cuttings and pamphlets are filed. The other allegations also had been denied. Specific stand was taken that the building in question is an unauthorised construction by encroaching the road and as such the same is liable for demolition.

5. A reply affidavit also had been filed denying several of the allegations made in the counter affidavit.

6. A Commissioner was appointed and the report of the Commissioner was filed and objections to the report of the Commissioner also was filed.

7. An additional affidavit was filed narrating several factual details. In the additional affidavit it was specifically pleaded by the writ petitioner that the tenant of the petitioner informed that some persons claimed to be the officials of Municipal Corporation of Warangal came to the house of the petitioner and illegally demolished the bathroom and toilet and immediately, thereafter, the petitioner rushed to Warangal and gave a representation dt.7-11-1994 to the 1st respondent wherein he specifically stated in 1st para of 2nd page that in his absence, some persons claimed to be the officers of Municipal Corporation of Warangal came to his house and illegally demolished his bathroom and toilet and the

action of demolition is illegal, highhanded and arbitrary. It is also further stated in his reply affidavit at page No.3 that his bathroom and lavatory have been demolished without giving any notice and without following any procedure as established by law and therefore, the action of said demolition is in violation of principles of natural justice and law. It is further stated that the Writ Petition came up for admission on 14-11-1994 and after hearing on both sides i.e., Standing Counsel for Municipal Corporation of Warangal and his Counsel, notice before admission was ordered and keeping in view of the fact that demolition of his bathroom and toilet, His Lordship Mr.Justice Parvatha Rao ordered that status-quo as on the date of the order with regard to building shall be maintained by both the parties and subsequently the Writ Petition came up for admission on 28-11-1994 before the Hon'ble Mr.Justice Motilal B.Naik. It is stated that the petitioner was informed by his Counsel that he argued and brought to the notice of Hon'ble High Court the fact that the bathroom and lavatory were demolished by the officials of Municipal Corporation of Warangal and further Municipal Corporation of Warangal intends to demolish the entire building and during the course of argument, the Hon'ble High Court asked the Counsel for the Municipal Corporation of Warangal that whether the bathroom and lavatory were demolished or not. It is also further stated that on that day the Commissioner of Municipal Corporation of Warangal was physically present and after getting information and instructions from her, standing Counsel of Municipal Corporation of Warangal disputed the said contention and contended that there was no demolition and as

such the allegations were unfounded and only invented for the purpose of slinging mud on the 1st respondent and under these circumstances, the Hon'ble High Court found as hereunder:-

> *"In view of the dispute as to the claim of demolition of a portion of the house of the petitioner, I am of the view that truth or otherwise has to be ascertained by appointing an Advocate Commissioner in this regard."*

Accordingly, Sri V.Ashok Reddy, Advocate of this Court was appointed as an Advocate Commissioner in all probabilities shall inspect the spot preferably on Sunday i.e., 4-12-1994 around 12.00 noon and the Advocate Commissioner was permitted to seek the assistance of any person for finding out as to the existence of bathroom and lavatory and their demolition by the employees of the 1st respondent. It is also further stated that the Commission was executed in the presence of both the parties as well as their Advocates and the report of the Advocate Commissioner was filed in this Court. The Advocate Commissioner clearly and categorically stated that:

> "*I have found that there is one bathroom existing and undisturbed in the backside room of the premises from which there is a steel sheet door and there is also a door from the bathroom which leads to another room which is found demolished. The 'C' portion shown in the sketch plan is found demolished completely from top to basement and also it is found that the wall connecting the 'C' portion was also demolished. There is a debris found near the demolished portions. I could not make out whether the demolished portion shown in the 'C' portion of the sketch is a lavatory since there is debris placed over the floor. I have found 'C' and 'Defendant' portions, shown in the sketch plan demolished."*

The Advocate Commissioner has also taken the statements of A.Mallaiah, S/o.Narsaiah and Smt.G.Chandrakala, W/o.Nagabhushanam who are neighbours and the said persons have categorically stated that the bathroom and lavatory have been demolished on 6-11-1994 by the officials of the Municipal Corporation of the Warangal in their presence and identified the persons, who involved in the demolition activity, before the Advocate Commissioner. It is also stated that from the above facts and circumstances and the Advocate Commissioner's report, it is clearly established and proved that the bathroom and lavatory of the house in question were demolished by the officials of the Municipal Corporation of Warangal and a false statement was made by the Municipal Corporation of Warangal that there was no demolitions and that the allegations were unfounded has been made before this Court. Apart from making several other factual allegations, a request was made for payment of compensation.

8. An additional counter affidavit also was filed by respondent No.1 narrating several details and again reiterating the original stand taken by the first respondent.

9. No doubt, incidentally, the sue motu Contempt Case C.C.No.781/95 and the order ultimately passed by the Division Bench also had been brought to the notice of this Court.

10. In the light of the facts and circumstances, this Court is of the considered opinion that the Writ Petition be disposed of with the following directions:-

> *"The respondents are hereby directed not to proceed with the further demolition activity of the subject matter*

of the Writ Petition unless and until they follow the due process of law in accordance with the provisions of the Hyderabad Municipal Corporation Act 1955. It is needless to say that till the due process of law is followed, no demolition activity relating to the subject matter need be proceeded with."

11. Accordingly, the Writ Petition is disposed of. No order as to costs.

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Justice P.S.Narayana

27th September, 2006

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